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April 2, 2007

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Attn. STB Ex Parte No. 661 (Sub-No. 1)
395 E Street, SW
Washington, D.C. 20423-0001

Re. Ex Parte No 661 (Sub-No. 1), Rail
Fuel Surcharges

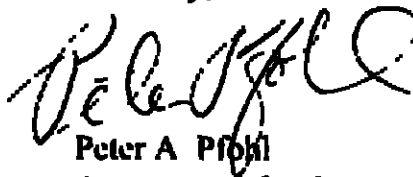
Dear Secretary Williams

Please find an original and ten (10) copies of the Comments of the Western Coal Traffic League in the above-referenced proceeding

We have enclosed an additional copy of the Notice. Please indicate receipt and filing by time-stamping this copy and returning it with our messenger.

Thank you for your attention to this matter

Sincerely,



Peter A. Pfuhl
An Attorney for the Western
Coal Traffic League

Enclosures

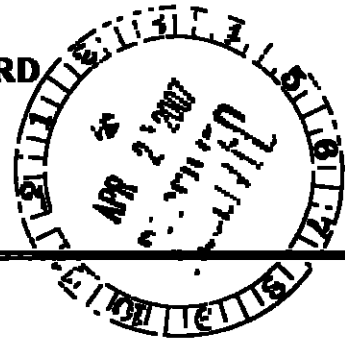


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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



RAIL FUEL SURCHARGES

Ex Parte No. 661 (Sub-No.1)

**COMMENTS OF THE
WESTERN COAL TRAFFIC LEAGUE**

**ENTERED
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WESTERN COAL TRAFFIC LEAGUE

Of Counsel.

**Slover & Loftus
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Dated: April 2, 2007

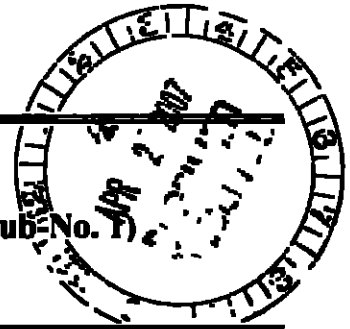
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It's Attorneys

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

RAIL FUEL SURCHARGES

)
)
) **Ex Parte No. 661 (Sub-No. 1)**
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**COMMENTS OF THE
WESTERN COAL TRAFFIC LEAGUE**

These Comments are submitted by the Western Coal Traffic League ("WCTL") in response to the decision served by the Surface Transportation Board ("STB" or "Board") in the above-captioned proceeding on January 26, 2007 requesting public comment on the Board's proposal to require Class I railroads to report specified monthly fuel surcharge related information.

IDENTITY AND INTEREST

WCTL is an association whose membership is composed of organizations that purchase and transport coal mined west of the Mississippi.¹ WCTL members transport over 140 million tons of coal annually, nearly all of which moves by rail. WCTL has actively participated for many years before the Board and its predecessor, the

¹ WCTL members include the following entities: Alliant Energy, Ameren Energy Fuels and Services, Arizona Electric Power Cooperative, Inc., Arizona Public Service, CLECO Corporation, City of Austin, Texas, CPS Energy, Kansas City Power & Light Company, Lower Colorado River Authority, MidAmerican Energy Company, Minnesota Power, Nebraska Public Power District, Omaha Public Power District, Texas Municipal Power Agency, Western Farmers Electric Cooperative, Western Fuels Association, Inc., Wisconsin Public Service Corporation, and Xcel Energy.

Interstate Commerce Commission ("ICC"), including in proceedings addressing substantive and procedural rules governing railroad regulatory and cost reporting requirements, and on initiatives designed to prevent railroad practices or conduct that contravenes the law. WCTL also fully participated at the Board's public hearing and submitted two rounds of written comments in the Board's underlying Ex Parte No. 661 proceeding.² WCTL has a substantial interest in the railroads' fuel surcharge programs that ultimately must be paid by electricity ratepayers as part of their monthly electric bills. WCTL also agrees with the Board that obtaining meaningful reporting information from each of the Class I railroads regarding their fuel surcharge programs can be helpful to enable the Board and the public to better monitor the railroad industry's fuel surcharge practices.

COMMENTS

On January 26, 2006, the Board issued two decisions in its Ex Parte No. 661 proceedings. In its first decision ("Decision I") issued in Ex Parte No. 661, the Board generally affirmed its prior findings that it is an unreasonable practice to "compute fuel surcharges as a percentage of existing rates" and to "double dip" in the recoupment of fuel costs. The Board concluded that any fuel surcharge program must be tied "to those attributes of a movement that directly affect the amount of fuel consumed," and it ordered

² See WCTL's April 27, 2006 Comments and WCTL's October 2, 2006 Comments

the Class I railroads to conform their practices to the findings contained in its decision by May 1, 2007. Several of the Class I carriers have now announced that they will be implementing new programs in order to attempt to comply with the Board's Decision I order.

In its second decision ("Decision II") issued in Ex Parte No. 661 (Sub-No. 1), the Board proposed that each Class I railroad file with the STB a monthly report containing the following information:

- (1) Total fuel cost;
- (2) Gallons of fuel consumed;
- (3) Increase or decrease in cost of fuel, and
- (4) Revenue from fuel surcharges.

WCTI submits that, in addition to the above reporting, certain supplemental monthly information should be reported to enable the Board and the general public to better monitor the railroads' fuel surcharge practices, and to help assess whether the programs are being fairly and equitably applied, in the following areas:

1. Non-Fuel Surcharge Fuel Recoveries

The Board proposes that carriers be required to report total revenue received from "fuel surcharges." However, as WCTI stated in its October 6, 2006 Comments ("WCTI Comments"), apart from fuel surcharges, carriers are recovering changes in fuel prices from other non-fuel surcharge rate adjustment mechanisms, such as

through the application of the Rail Cost Adjustment Factor ("RCAF"), which is inclusive of fuel. See WCTL Oct 2, 2006 Comments, V S Crowley/Fapp at 22. Thus, a substantial amount of traffic may not technically be paying segregated "fuel surcharges" but nevertheless is paying for fuel price increases under some other applicable adjustment mechanism governing the movement. Id.

Of course, any recoupment in fuel costs by a carrier through application of both a fuel surcharge mechanism and another fuel recoupment mechanism (e.g., the RCAF), would constitute a "double-dipping" in the recoupment of fuel costs in violation of the Board's Decision I findings. In order to ensure the Board has a meaningful and full picture of railroad fuel cost recovery information, the Board should require the carriers to provide an accounting of all associated fuel collection revenues, including revenues received from carrier fuel surcharge programs and separately from all other non-surcharge fuel cost recovery mechanisms. Also, carriers should be required to provide an appropriate accounting on any traffic on which they are collecting for fuel both with a fuel surcharge and with a non-surcharge fuel cost recovery mechanism.

2. Commodity-Specific Fuel Recoveries

Second, the proposed reporting requirements in Decision II would not allow the STB and shippers to adequately determine if one type of traffic or traffic group is disproportionately supplying a majority of the railroad's fuel price recovery (again, this requires a review of other non-fuel surcharge rate adjustment mechanism data under

which railroads recover changes in railroad fuel prices) WCTL previously recommended that the STB expand the breadth and depth of the statistics reported by the railroads in this respect. See WCTL Oct. 2, 2006 Comments, V.S. Crowley/Fapp at 21-23 In particular, railroads should be required to report data by major commodity group as reported in the railroads' regular financial reports, and separated between interchange and non-interchange traffic. Such reporting metrics, along with total revenue, ton-miles, car-miles and train-miles by commodity and interchange category, would provide some additional clarity in the railroads' recovery of fuel costs associated with their fuel surcharge programs

3. Carrier Windfalls

As WCTL stated in its Comments in Ex Parte No. 661, railroads can be made whole for any fuel price changes using the fuel component of an established industry price adjustment mechanism, the RCAF See WCTL Oct. 2, 2006 Comments at 5-9, V.S. Crowley/Fapp at 4-8 WCTL supported the use of the RCAF as an appropriate, fair, and time-tested fuel cost recovery mechanism See id., WCTL April 27 Comments at 13-16 However, the railroads have moved away from the RCAF index (at least insofar as incorporating the RCAF's fuel index) as a fuel recovery mechanism in favor of using other more lucrative and inequitable fuel cost recovery mechanisms Additionally, carrier windfalls have resulted from carrier manipulation in a manner that is clearly unreasonable In order to guard against such abuses, the Board should collect data on,

and closely guard against any such carrier practices in two areas as described below

a. Mis-Aligned Surcharge Threshold Recoveries

A central component of WCTL's Comments in Ex Parte No. 661 addressed the critical need to ensure that a carrier's fuel surcharge base period is aligned with the base period of the underlying rail rate. See WCTL Oct. 2, 2006 Comments at 13-15, V S Crowley/Fapp at 8-12. Specifically, in implementing their fuel surcharge programs, the carriers have failed to utilize threshold fuel prices that are tied to the level of the price of fuel at the time when a rate is initiated. See Id. For example, WCTL's Comments showed that for rates established by UP and BNSF in 2Q06, both carriers retained much lower triggering fuel surcharge levels established at 2002 fuel price levels. Id.

WCTL understands that UP has recently announced that, for some of its publicly priced traffic, it is increasing its applicable transportation rates for movements to "reflect[] fuel costs at higher base levels." In addition to including in their rate structure all fuel costs, UP will apply a fuel surcharge when monthly average retail diesel fuel prices reach or exceed threshold Highway Diesel Fuel ("HDF") prices. However, the threshold HDF price to be utilized by UP on such traffic still remains appreciably below current HDF prices. Additionally, for other UP publicly priced traffic (e.g., coal traffic moving under UP's Circular 111), UP will still use substantially lower 2002 threshold price levels. Meanwhile, BNSF has not announced any changes to its program and it also apparently will continue to utilize 2002 HDF threshold price levels that are well-below

current fuel price levels

This means that customers initiating new service today with UP and BNSF must pay base rates that have embedded fuel prices as of today's date, yet that customer has the added burden of paying fuel surcharges based upon fuel surcharge threshold levels that are below (and in many instances, far below) those embedded in today's rate Id. V S Crowley/Fapp at 10-11 By failing to reflect changes in their embedded price of fuel in rail rates that take into account current market realities of higher fuel prices, the carriers have enjoyed an unfair economic windfall Id. Such a practice also amounts to a double-dipping in the recoupment of fuel costs by railroads collecting for fuel once in the rate itself, and twice in using an inappropriate triggering price This is a clear violation of the Board's Decision I findings and its prior findings that any fuel surcharge program be "limited to recouping increased fuel costs that are not reflected in the base rate" August 3, 2006 Decision at 4

This practice should be appropriately monitored by the Board through appropriate monthly reporting One manner of doing so would be for the railroads to report on all new traffic on which a surcharge was applied during the month, and whether the applicable average HDF price¹ for the month was applied on that traffic For any such

¹ WCTL understands that the Board in Decision I favors the use of the HDF as an index but does not mandate its use For purposes of the Comments below, any reference to the HDF index as a general index to measure changes in fuel costs shall also apply to whatever appropriate fuel index is being utilized by a given carrier.

traffic that did not use the threshold HDF price applicable for the month, carriers should report on the HDF threshold price actually being applied on the traffic.⁴ After reviewing this information, if the Board does not see evidence that the carriers have appropriately addressed the matter by linking the base time period in the fuel surcharge threshold price level to the base period in the rail rates entered, the Board should take appropriate administrative action to immediately address and remedy the situation

b. Declining Fuel Price Recoveries

As WCTL has discussed in its Ex Parte No 661 Comments, none of the carriers' programs established to date apply a credit if the railroad's fuel price declines below the fuel base price when the underlying transportation rate was established. See WCTL Oct 2, 2006 Comments at 15-16, V.S. Crowley/Fupp at 16. This practice results in a serious inequity in risk-sharing between railroads and shippers. Id. Under their current programs, railroads are protected on the up-side because they are compensated for any increases in fuel prices above the base period fuel prices. However, there is asymmetric risk because shippers are not similarly protected against falling fuel prices below the base period fuel prices. If carriers' fuel prices fall below the base period fuel prices, a carrier keeps the difference. Id.

⁴ In order to get a full picture of the problem, the Board could also consider requiring carriers to provide appropriate reporting on all other existing traffic (and not just new traffic) to which a fuel surcharge applies where the threshold levels do not correlate to the time period when the underlying freight rate was established, as well as what threshold HDF prices were actually applied on the traffic

Such a practice also constitutes double-dipping in the recoupment of fuel costs by collecting for fuel once in the rate itself, and twice by pocketing the difference between the fixed base fuel level and the actual fuel costs that are below the base level in violation of the Board's Decision I findings. The Board should require appropriate reporting on this subject. In particular, when the applicable HDF price for the reporting month has declined below the fuel base price applied when an underlying transportation rate was established, carriers should be required to report on the total amount of traffic and fuel surcharge revenues collected during the month for that traffic, and the total amount of fuel surcharge credits provided to customers for the traffic. If the Board does not see sufficient evidence that the carriers have appropriately addressed the matter by either providing for customer credits or allowing the fuel price component to decline when carriers' fuel prices fall below the base period fuel prices, the Board should take appropriate administrative action immediately to address and remedy the situation.

CONCLUSION

WCTL appreciates the opportunity to submit these Comments, and it

respectfully requests that the Board include the additional reporting measures addressed herein

Respectfully submitted,

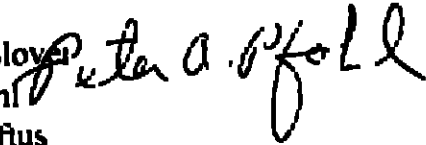
THE WESTERN COAL TRAFFIC LEAGUE

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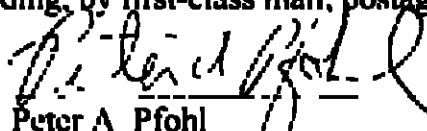


Dated: April 2, 2007

It's Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2007, I have caused to be served a copy of the foregoing Comments of the Western Coal Traffic League upon all parties of record to the Ex Parte No. 661 proceeding, by first-class mail, postage prepaid.


Peter A. Pfohl